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10/603,453	06/25/2003	Jason Cohen	MS#302665.01 (5062)	3271

  

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EXAMINER	
COULTER, KENNETH R	

  

ART UNIT	PAPER NUMBER
2141	

  

NOTIFICATION DATE	DELIVERY MODE
04/21/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/603,453		COHEN ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kenneth R. Coulter		2141	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6-17,22-33,37-40,44-48,52-56,62-66 and 68-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-17,22-33,37-40,44-48,52-56,62-66 and 68-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/18/07</u> .  | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 22, 23, 24, 52, 56, 63, and 64 objected to because of the following informalities:

claims 22, 23, 24, 52, 63, and 64 are dependent upon canceled claims;  
claim 56 has grammar and punctuation errors (claim 56, line 13 “is on a different channel **that** the transmitting of the common data and the file data.”; claim 56, line 16 period).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 6 – 17, 22 – 33, 37 – 40, 44 – 48, 52 – 56, 62 – 66, and 68 – 70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The function of the

Art Unit: 2141

“first software” and “second software” included with the first image and second image respectively is not taught in the specification.

In addition, with regard to claims 69 and 70, the term “tangible” is not taught in the specification.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17, 22 – 33, 37 – 39, 48, 52 – 56, 62 – 66 and 68 – 70 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent claims 17 and 39 are directed to transmission methods that can be considered a signal that is a carrier wave (see paragraph 62 below).

Independent claims 33 and 38 disclose a client side system comprising only software.

Independent claims 48 and 56 are directed to transmission methods that can be considered a signal that is a carrier wave (see paragraph 62 below).

Art Unit: 2141

Independent claim 65 is directed to modulated data signal that can be a carrier wave (see paragraph 62 below).

Independent claims 69 and 70 are directed to computer readable storage medium that can be considered a carrier wave (see paragraph 62 below).

### **Paragraph 62 of the specification**

The computer 130 typically has at least some form of computer readable media. Computer readable media, which include both volatile and nonvolatile media, removable and non-removable media, may be any available medium that can be accessed by computer 130. By way of example and not limitation, computer readable media comprise computer storage media and communication media. Computer storage media include volatile and nonvolatile, removable and non-removable media implemented in any method or technology for storage of information such as computer readable instructions, data structures, program modules or other data. For example, computer storage media include RAM, ROM, EEPROM, flash memory or other memory technology, CD-ROM, digital versatile disks (DVD) or other optical disk storage, magnetic cassettes, magnetic tape, magnetic disk storage or other magnetic storage devices, or any other medium that can be used to store the desired information and that can be accessed by computer 130. **Communication media** typically embody computer readable instructions, data structures, program modules, or other data in a modulated data signal such as a **carrier wave** or other transport mechanism and include any information delivery media. Those skilled in the art are familiar with the modulated data signal, which has one or more of its characteristics set or changed in such a manner as to encode information in the signal. Wired media, such as a wired network or direct-wired connection, and wireless media, such as acoustic, RF, infrared, and other wireless media, are examples of communication media. **Combinations of the any of the above are also included within the scope of computer readable media.**

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Art Unit: 2141

Tangible hardware can be added to these independent claims in order to overcome the 35 USC 101 rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 6 – 17, 22 – 33, 37 – 40, 44 – 48, 52 – 56, 62 – 66, and 68 – 70 are rejected under 35 U.S.C. 103(a) as being unpatentable by Diwan (U.S. Pat. No. 6,801,936) (Systems and Methods for Generating Customized Bundles of Information)

Art Unit: 2141

in view of Kihara (U.S. Pat. No. 6,625,625) (System and Method for Backup and Restoring by Utilizing Common and Unique Portions of Data).

2.1 Regarding claim 1, Diwan discloses a system comprising:

a first image including a first software wherein the first image includes common file data, and first file data (Abstract; col. 1, lines 14 – 19 “*The types of information provided over these networks ... include **streaming** audio, **video**, ..., and other **multimedia information**.*”; col. 2, lines 8 – 15; col. 6, lines 6 – 25);

a second image including a second software wherein the second image includes the common file data and second file data which is different from the first file data (Abstract; col. 2, lines 8 – 15; col. 6, lines 6 – 25);

a server (Fig. 1, items 145, 150, 155; col. 3, lines 15 – 22 “The information providers 145 – 155 may include **servers**, personal computers, ... that supply information to whomever wants it and/or subscribes to the service.”);

a first destination device (Fig. 1, items 105, 110, 115, 125 “subscribers”; col. 2, line 66 – col. 3, line 14 “subscriber”);

a second destination device (Fig. 1, items 105, 110, 115, 125; col. 2, line 66 – col. 3, line 14);

a shared network linking the server to the first and second destination devices (Fig. 1; col. 2, lines 55 – 65);

wherein the server is adapted to simultaneously transmit the common data to the first and second destination devices via the shared network (col. 2, lines 8 – 15

Art Unit: 2141

“generating a multicast message containing the common information; and transmitting the multicast message to the group of subscribers.”); and

wherein the server simultaneously transmits the first file data to the first and second destination devices via the shared network and wherein the server simultaneously transmits the second file data to the first and second destination devices via the shared network (Fig. 1; col. 2, lines 8 – 15, 55 – 65);

wherein the server simultaneously transmits the first image including the first software and the second image including the second software in a single image stream from which the first image and the second image can each be re-created by imaging (Fig. 5, item 540; col. 5, line 62 – col. 6, line 5; col. 6, lines 16 – 25);

wherein the server simultaneously transmits *first descriptive data* to the first and second destination devices via the shared network, said first descriptive data identifying the common data and first file data of the first image (Figs. 1, 4, 5; col. 5, lines 15 – 47; col. 6, lines 6 – 25);

wherein the server simultaneously transmit *second descriptive data* to the first and second destination devices via the shared network, said second descriptive data identifying the common data and second file data of the second image (Figs. 1, 4, 5; col. 5, lines 15 – 47; col. 6, lines 6 – 25); and

wherein the first destination device selectively receives the common data and the first file data via the shared network as defined by the first descriptive data transmitted to the first destination device from the server simultaneously while the second destination device selectively receives the common data and the second file data via

Art Unit: 2141

the shared network as defined by the second descriptive data transmitted to the second destination device from the server (Figs. 1, 4, 5; col. 5, lines 15 – 47; col. 5, line 62 – col. 6, line 5; col. 2, lines 8 – 15; col. 6, lines 6 – 25);

whereby the server simultaneously, directly multicasts the common data, the first file data and the second file data to both the first and second destination devices (Abstract; col. 2, lines 8 – 15; col. 6, lines 6 – 25).

However, Diwan does not explicitly disclose first descriptive data and second descriptive data.

Kihara teaches first descriptive data and second descriptive data that identify the common data and unique data in a multicast system (Figs. 4, 17; col. 5, lines 49 – 58).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the descriptive data of Kihara with Diwan in order to for the subscriber in Diwan to accurately discard "any extraneous information" (col. 6, lines 20 – 22).

2.2 Per claim 6, Diwan teaches the system of claim 3 wherein the server **directly** transmits the first descriptive data to the first destination device and the server **directly** transmits the second descriptive data to the second destination device, and wherein the server **multicasts the common data**, the first file data and the second file data simultaneously to the first and second destination devices (Fig. 1; col. 2, lines 8 – 15 "multicast message").

Art Unit: 2141

2.3 Regarding claim 7, Diwan discloses the system of claim 3 wherein the server maintains a list of destination devices and images to be transmitted to destination devices on the list and multicasts common data and file data corresponding to the images to be transmitted to destination device on the list (Fig. 1; col. 2, lines 8 – 15 “generating a multicast message containing the common information; and transmitting the multicast message to the group of subscribers.”).

2.4 Per claim 8, Diwan teaches the system of claim 3 wherein the server multicasts the common data, the first file data and the second file data to the first and second destination devices including a unique identifier for the data currently being transmitted (Figs. 1, 3; col. 2, lines 8 – 15; col. 5, lines 48 – 58).

2.5 Regarding claim 9, Diwan discloses the system of claim 8 wherein the first destination device receives the common data, the first file data and the second file data and stores only the common data and first file data as indicated by the unique identifier (col. 2, lines 8 – 15; col. 5, lines 48 – 58).

2.6 Per claim 10, Diwan teaches the system of claim 7 wherein the first destination device provides a first notification to the server when the first destination device has received the common data and the file data corresponding to the first descriptive data (col. 2, lines 8 – 15; col. 5, lines 48 – 58).

Art Unit: 2141

2.7 Regarding claim 11, Diwan discloses the system of claim 10 wherein the server, in response to the first notification, removes the first destination device from the list and discontinues multicasting the file data of the first image, unless another destination device has requested the first image (Figs. 4, 5; col. 2, lines 8 – 15; col. 5, lines 48 – 58; col. 6, lines 16 – 25).

2.8 Per claim 12, Diwan teaches the system of claim 10 wherein the server, in response to the second notification, removes the second destination device from the list and discontinues multicasting the common data of the second image, unless another destination device has requested an image which includes the common data (Figs. 4, 5; col. 2, lines 8 – 15; col. 5, lines 48 – 58; col. 6, lines 16 – 25).

2.9 Regarding claim 13, Diwan discloses the system of claim 10 wherein the first destination device reconstructs the image corresponding to the first descriptive data (col. 6, lines 16 – 25 “discards any extraneous information”).

2.10 Per claim 14, Diwan teaches the system of claim 1 wherein the server is adapted to transmit a plurality of multicast streams including common and/or descriptive data and wherein the servers selects a number of multicast streams as a function of destination device restore time and as a function of total bandwidth of the streams being transmitted (Fig. 4; col. 2, lines 8 – 15; col. 5, lines 15 – 58).

Art Unit: 2141

2.11 Regarding claim 15, Diwan discloses the system of claim 1 wherein the server is configured to sequentially transmit the file data in a sequence defined by a priority (Fig. 4; col. 2, lines 8 – 15; col. 5, lines 15 – 58).

2.12 Per claim 16, Diwan teaches the system of claim 1 for transmitting a third image including a third software, wherein the first and third images include common file data, wherein the third image includes third file data which is different from the first file data and which is different from the second file data, said system further comprising: a third destination device; said shared network linking the server to the third destination device; wherein the server is adapted to simultaneously transmit the common data to the first, second and third destination devices via the shared network; and wherein the server is adapted to transmit the third file data to the third destination device via the shared network (Fig. 1, items 105, 110, 115, 120, 125; col. 2, lines 8 – 15 “generating a multicast message containing the common information; and transmitting the multicast message to the group of subscribers.”; col. 2, line 66 – col. 3, line 14 “additional subscribers may also be included in the network 100”).

2.13 Regarding claims 17, 22 – 33, 37 – 40, 44 – 48, 52 – 56, 62 – 66, and 68 – 70, the rejection of claims 1 and 6 – 16 under 35 USC 103(a) (paragraphs 2.1 – 2.12 above) applies fully.

### ***Response to Arguments***

Art Unit: 2141

Applicant's arguments with respect to claims 1, 6 – 17, 22 – 33, 37 – 40, 44 – 48, 52 – 56, 62 – 66, and 68 – 70 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth R Coulter/  
Primary Examiner, Art Unit 2141

krc